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1 Volume: I

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4 **COPY**

5 UNITED STATES DISTRICT COURT

6 DISTRICT OF MASSACHUSETTS EASTERN DIVISION

7 - - - - - x

8 NOAH GREENBERG,

9 Plaintiff, Civil Action

10 v. No. 04-11934-GAO

11 TOWN OF FALMOUTH, and

12 GANNETT FLEMING, INC.,

13 Defendants.

14 - - - - - x

15 DEPOSITION of NOAH GREENBERG, a witness  
16 called by counsel for the Defendant, Gannett  
17 Fleming, taken pursuant to the applicable  
18 provisions of the Massachusetts Rules of Civil  
19 Procedure, before Toni F. Beckwith, Registered  
20 Merit Reporter, CSR No. 111293 and Notary Public  
21 in and for the Commonwealth of Massachusetts, at  
22 the Offices of Michienzie & Sawin, LLC, 745  
23 Boylston Street, Boston, Massachusetts, on  
24 Monday, October 17, 2005, commencing at  
10:15 a.m.

1 1990s or 2000?

2 A. 2000, correct.

3 Q. You were associated with Jacobs &  
4 Greenberg and the Robert Charles Group at the  
5 same time; is that right?

6 A. Yes.

7 Q. What was the nature of your  
8 affiliation with Jacobs & Greenberg?

9 A. Partnership. They were architects.

10 Q. Were you incorporated?

11 A. They might have been. I'm not sure.

12 Q. That was a professional partnership?

13 A. Yes, professional partnership.

14 Q. What percentage of your time during  
15 that 10- to 14-year period did you spend with  
16 Jacobs & Greenberg working on their work? Does  
17 my question make sense?

18 Here's why I'm asking. It sounds like  
19 you're working for Jacobs & Greenberg and the  
20 Robert Charles Group at the same time?

21 A. The Robert Charles Group is an  
22 affiliated group of architects and engineers  
23 that were joint-ventured on projects at the same  
24 time with Jacobs & Greenberg. We would

1 joint-venture sometimes with that group.

2 Q. What was the nature of the Robert  
3 Charles Group as far as a business entity, do  
4 you know? Was it incorporated?

5 A. No.

6 Q. Were you an employee of the Robert  
7 Charles Group?

8 A. I was a principal.

9 Q. Were you a partner of the Robert  
10 Charles Group?

11 A. I don't know. I don't know if I was a  
12 partner. I was a principal, if that was the  
13 same as a partner. I'm not sure what the actual  
14 association was other than I was a principal of  
15 that group.

16 Q. And you stopped working for the Robert  
17 Charles Group in Falmouth sometime in 1990 or  
18 around 2000; is that correct?

19 A. The group essentially broke up as they  
20 retired.

21 Q. Do you know when that was?

22 A. In that period.

23 Q. You don't know any closer than that?

24 A. Not specifically, no.

14

1       your lawyer changing the date, by agreement, of  
2       the deposition until today. I don't have any  
3       questions about that exhibit. I just wanted to  
4       enter it as Exhibit 1.

5                     Exhibit 2 is a copy of your plans,  
6       what I believe is your plans. And I want to  
7       show it to you and ask you to identify the  
8       plans.

9                     Further identifying Exhibit 2, it's a  
10      Town of Falmouth Request For Qualifications  
11      Sheet that has Bates Nos. GF 00248 through  
12      00253, and attached to that are three sheets of  
13      plans -- four sheets of plans, sorry, with Bates  
14      Nos. GF 00254 through GF 00257.

15                     (Pause)

16             A. These are the plans.

17             Q. Can you take a moment to look at the  
18      four sheets? It's really the plans that I  
19      needed to ask you about.

20                     (Pause)

21             A. I prepared these plans.

22             Q. Are these the plans, these four  
23      sheets, that were submitted by you to the Town  
24      of Falmouth in the dates that you indicated,

1 of the site?

2 A. I don't recall the angle of the slope.

3 Q. When you were planning the office  
4 spaces in the administrative area, did you  
5 conduct interviews with DPW personnel in  
6 connection with these preliminary plans?

7 A. Yes, I did.

8 Q. Whom did you interview?

9 A. I don't recall their names, but they  
10 were the people who worked there.

11 Q. How many people did you interview?

12 A. I don't recall how many, but I would  
13 say it was five or six.

14 Q. When were these interviews conducted?

15 A. In the year of '93, 1993, prior to the  
16 preparation of the plans.

17 Q. Do you remember any of the names of  
18 the people that you interviewed in connection  
19 with this job?

20 A. No, I don't. Unfortunately, I don't.

21 Q. Did you keep any record of those  
22 interviews?

23 A. No, I didn't.

24 Q. How did you use the interviews in

1 that.

2 Q. The letter that is dated December 6,  
3 1993, that's part of Exhibit 5 and that has  
4 Bates number GF 00580, is that letter from the  
5 Robert Charles Group?

6 A. Well, that is from the Robert Charles  
7 Group with Noah Greenberg and Charles Jacobs as  
8 the architects in charge of the project, as it  
9 says here.

10 Q. Is that your signature at the bottom  
11 of that letter?

12 A. That is.

13 Q. Were you an owner of the Robert  
14 Charles Group? You said it was a joint venture.

15 A. I was a partner.

16 Q. After this time, when you made this  
17 contract with the town to do these preliminary  
18 plans, which entity owned the rights to those  
19 plans? #

20 A. Well, the architects. I owned the  
21 rights, the design of the plans.

22 Q. You as an individual?

23 A. As Noah Greenberg, yes. As the  
24 design -- well, it would be Greenberg & Jacobs.

1 It would be Jacobs & Greenberg, and then  
2 subsequently Noah Greenberg, as he retired.

3 Q. Did Jacobs do any part of this job?

4 A. He attended the early meetings with  
5 me, and he spoke with Bill Owens. We met  
6 together at the early part and sort of did the  
7 program. But I was in charge of the design from  
8 the beginning.

9 Q. Let me show you Exhibit 7. Exhibit 7  
10 is a one-page letter that appears to be from  
11 Mr. Greenberg to Mr. Owen. It's dated February  
12 7, 2000.

13 If you could just take a moment to  
14 look at that and see if you recognize the  
15 letter.

16 A. I do.

17 Q. Is that your signature at the bottom  
18 of the letter?

19 A. It is.

20 Q. I'd like to read the last sentence of  
21 the first paragraph into the record. On this  
22 exhibit it says, You can reproduce these  
23 drawings via Xerox or color Xerox at your will  
24 provided only that our NGA title block is

1 A. Well, I do.

2 Q. You have a color version of it?

3 A. And the town certainly does. You must  
4 have.

5 MR. RUSSELL: That's enough. There's  
6 no question pending.

7 Q. In May of 2001, did Falmouth, the Town  
8 of Falmouth, issue a request for qualifications  
9 for architectural design services on the current  
10 DPW job?

11 MR. RUSSELL: If you know.

12 A. Apparently. I don't know.

13 Q. Do you know if that request was  
14 published in the register?

15 A. I don't know.

16 Q. Did you or your firm at that time bid  
17 on that job or submit a proposal in response to  
18 that job?

19 A. No.

20 Q. Why did you not bid on that job or  
21 submit a proposal?

22 A. For one thing, I didn't know that it  
23 was being offered as a proposal; and for another  
24 thing, it was my job. As far as I understood

1 all along, there was no need or purpose to go  
2 out for another RFP when it was my project to  
3 start with.

4 Q. Were you aware of the request for  
5 qualifications or request for proposal in the  
6 register of May of 2001?

7 A. I was made aware of it by a phone call  
8 from another architect, who -- I don't remember  
9 their name --

10 Q. I see.

11 A. -- but who informed me of the fact  
12 that they had received drawings that had my name  
13 on it, and was I aware of that.

14 Q. So the phone call to you from the  
15 other architect, you don't remember his or her  
16 name?

17 A. No, I don't.

18 Q. This phone call said that they had  
19 received your drawings as part of a request for  
20 proposal from the town?

21 A. Yes.

22 Q. Do you recall about when that was? Is  
23 this about May of 2001?

24 A. Well, it would have to be sometime

1           Oceanographic, Marine Biological Laboratory,  
2           Plymouth Savings Bank, some private residences.

3           Q. But never any state entities?

4           A. No.

5           Q. Moving along, you had mentioned  
6           earlier today that you had always thought or --  
7           you thought it was your job all along in  
8           Falmouth?

9           A. Yes.

10          Q. What gave you that impression?

11          A. Well, for one thing, every project  
12          that I've ever worked on, and that's the process  
13          of the project, that you do the preliminary,  
14          then you do the development, then you do the  
15          construction, then you oversee the construction.  
16          That's the method that architects use to do  
17          ordinary work in progress.

18           This project began as a preliminary,  
19           stages of it, but the work continued throughout  
20           a period of many years, actually, until finally  
21           the last part being done in 2000. It went up to  
22           2000.

23           During the course of that time, it was  
24           never indicated -- there was no indication to me

1 otherwise that this wasn't a project that, as  
2 the funding would be in place, it would be my  
3 project to continue.

4 If in the event that I did a project  
5 and the preliminaries were not good or not  
6 accepted, then I would know that. Somebody  
7 would say, These are not good, and we can't go  
8 further with you, you are fired, in which case  
9 they would go somewhere else and do something  
10 else.

11 Q. Did anyone from Falmouth ever tell you  
12 that you were, for lack of a better term, a  
13 shoe-in for the ultimate project?

14 A. There would be no reason to discuss it  
15 in that term. The acceptance was the letter of  
16 acceptance to the project to start with. There  
17 never was a doubt. As you can tell by my  
18 letters to him, there was never any question  
19 that there was an ultimate project in mind.  
20 This was the project.

21 Q. You mentioned just now that you had  
22 the impression that the acceptance by Falmouth  
23 of the proposal by Robert Charles entailed your  
24 involvement in the entire project, the whole

1                   A. That's not actually Mylar. That's  
2 acetate, but it's similar to that.

Q. Same idea, though?

4 A. Same idea.

5 Q. With regard to this clause, had you  
6 had any conversation with anyone from Falmouth  
7 as to why they wanted something that they could  
8 reproduce?

A. No. It wouldn't be unusual.

10 Q. Did you get the impression that they  
11 were going to share copies of the preliminary  
12 plans with other entities?

13 A. What is an entity?

14 Q. A company.

15 A. No. I did not have that opinion. I  
16 thought they were being used to distribute  
17 amongst the DPW for approval of the plans.

18 Q. If you could just turn back to Page 1,  
19 turn it back once. It talks about scope of  
20 services. I just want to talk about a few of  
21 these. The first one there, just read it to  
22 yourself and let me know when you're done.

23 (Pause)

24 A. I read it.

120

1 Q. Did you do anything, and I think you  
2 did, did you do anything to effect this  
3 provision?

4 A. What do you mean?

5 Q. What did you do pursuant to this scope  
6 of services, so to speak?

7 A. I met with the DPW director and his  
8 staff to determine the future space  
9 requirements.

10 Q. I think you mentioned that earlier  
11 today?

12 A. Right.

13 Q. And you had some notes, but you're not  
14 quite sure if you have them any longer?

15 A. I don't have them any longer.

16 Q. You spoke to the DPW director,  
17 Mr. Owen?

18 A. Correct.

19 Q. You did?

20 A. Yes.

21 Q. During that conversation, can you tell  
22 me generally what you spoke about? I don't need  
23 the obvious stuff, but anything --

24 A. We met more than once. We met with

1 Charlie Jacobs and Bill Owen and myself maybe  
2 three or four times.

3 Q. And all those conversations surrounded  
4 the needs for that new building for the  
5 department?

6 A. Yes.

7 Q. And in none of those conversations did  
8 anyone speak about what would happen after the  
9 funding was approved?

10 A. Yes. We spoke about what would happen  
11 after the funding was approved.

12 Q. Tell me about those conversations,  
13 please.

14 A. How the project would go forward.

15 Q. So during those conversations -- can  
16 you actually elaborate on that? What do you  
17 mean how the project would go forward?

18 A. I can't remember exactly, but it  
19 wouldn't have been -- there was no reason to  
20 compartmentalize that this was only one part of  
21 the project. We were discussing the project.  
22 We never discussed this as just one part of the  
23 project to be ended here.

24 We discussed the needs of the DPW and

1           the project that needed to be constructed,  
2           whether it was assessing the engineering  
3           conditions of the mechanical and electrical  
4           systems or examining the roof structures or  
5           working on a budget.

6           We had those kinds of conversations,  
7           which were normal conversations in the design,  
8           preliminary design stages of a project.

9           Q. Okay. But I'm actually looking beyond  
10          the preliminary plans. I'm looking at the final  
11          plans and the fruition of the actual work. I'm  
12          wondering what, if anything, including what  
13          Mr. Owen had said to you with regard to your  
14          role in producing the final plans, not just the  
15          preliminaries.

16          A. I can't recall anything specific in  
17          that regard.

18          Q. But your general understanding was  
19          that it was understood that you would be  
20          producing the final plans as well?

21          A. If the preliminaries were approved.

22          Q. So you met with Mr. Owen. Was there  
23          someone else you met with?

24          A. Well, then I, on my own, went to meet

1       with the people who worked at the DPW garage  
2       itself.

3           Q. Just look there real quick under No. 2  
4       and read to it yourself and let me know --

5           A. Yes.

6           Q. You did all that stuff? You studied  
7       the bathrooms, or you reviewed the bathrooms,  
8       locker room facilities and storage room  
9       facilities and all that stuff?

10          A. Yes.

11           Q. Then No. 5, can you just jump down to  
12       that one there?

13          A. Yes.

14          Q. And you did that?

15          A. Yes.

16          Q. And was that done after you had met  
17       with the DPW people and you had studied the  
18       facilities as they existed, and then you came up  
19       with a determination as to future needs; is that  
20       accurate?

21          A. Partially, both times. Partially when  
22       we would talk about it at the beginning about  
23       the future spacing plans, and then to verify  
24       with the people who worked at the building

EXHIBIT 5

Greenberg  
10/17/05 HFB

**A PROPOSAL TO PROVIDE PRELIMINARY PLANS FOR  
THE EXPANSION AND RENOVATION OF THE  
FALMOUTH PUBLIC WORKS SERVICE MAINTENANCE  
FACILITY**

*Submitted to:*

*Mr. William B. Owen, P.E.  
Director of Public Works  
Town of Falmouth  
59 Town Hall Square  
Falmouth, MA 02540*

*Prepared by:*

*Robert Charles Group  
411 Waquoit Highway  
Falmouth, MA 02536*

*December 6, 1993*

GF 00579

Robert Charles GROUP

ENGINEERS - ARCHITECTS

December 6, 1993

Mr. William B. Owen, P.E.  
Director of Public Works  
59 Town Hall Square  
Falmouth, MA 02540

*RE: Public Works Service Maintenance Facility Improvements*

Dear Mr. Owen:

We are pleased to submit our proposal in the amount of \$7,800.00 to complete all architectural and engineering services for the expansion and renovation of the Municipal Service Maintenance Facility in accordance with the request for proposals.

Mr. Charles Jacobs and Mr. Noah Greenberg, architects in charge of the Falmouth Office will be the principals in direct responsibility for this project. We have had the opportunity to complete many commissions in the Cape Cod Area, including the following:

- Maintenance and Carpenters Shop, Woods Hole Oceanographic Institute.
- Modified Record Firing Range, Camp Edwards.
- Fuel Truck Containment Area, Otis Air Force Base.
- Collective Training Facility, Camp Edwards.

We have enclosed more detailed information regarding our experience and background. Thank you for your consideration of our proposal.

Sincerely,

  
Noah Greenberg  
Partner

GF 00580